

The question presented is whether defendant Jeffrey Wogram, (hereinafter referred to as “defendant”) is competent to stand trial. For the reasons that follow, the answer at this time is “no”.

II. BACKGROUND

By an Information filed in this Court on July 28, 2010, the State charged the defendant with three counts of Terroristic Threatening. The State also charged the defendant in the Superior Court with two counts of Intent to Threaten the Life or to Threaten Serious Physical Injury to a Public Official.¹

The defendant was seen on a video arraignment calendar in this Court on July 29, 2010. Based on the defendant's demeanor and conduct, and at the request of his counsel, the Court entered an Order requesting a competency evaluation of the defendant. Dr. Robert G. Thompson, a licensed psychologist with the DPC, conducted the examination of the defendant on August 17, 2010, and thereafter, issued his written report.²

The competency hearing was held on October 8, 2010. While the State and the Defense agreed that the defendant is not competent to stand trial at this time, a hearing was held because the statute, 11 Del. C. § 404(a), specifically refers to a hearing, and Defense Counsel indicated that the defendant did not waive the competency hearing. Dr. Thompson was the sole witness at the hearing. The parties stipulated to Dr. Thompson's qualifications as an expert witness in the area of competency evaluations.³ Dr. Thompson concluded that the defendant is not competent to stand trial at this time and recommends that the Court order the defendant's admission to the DPC.⁴

III. DISCUSSION

The test of competency to stand trial is set forth in 11 Del. C. § 404(a):

¹ Mr. Figliola represents the defendant in the pending Superior Court case (#1007026774), and thus, wished to participate in this competency hearing.

² State's Ex. No. 2, "The Delaware Psychiatric Center, Jane E. Mitchell Bldg., Forensic Mental Health Examination", 08/17/10.

³ State's Ex. No. 1, Curriculum Vitae of Robert G. Thompson, Psy. D.

⁴ State's Ex. No. 2, pg. 6

Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or mental defect, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the Court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial.

This statutory provision has been construed to require that a defendant is capable of three things: (1) to consult with defense counsel rationally; (2) to assist in preparing his or her defense; and (3) to have both a rational and factual understanding of the proceedings against him or her.⁵

Determining a defendant's mental competency to stand trial is a fact-intensive endeavor in which the totality of circumstances of each particular case needs to be considered.⁶ In addition to the three-pronged test noted above, some Delaware cases have also considered 20 different factors ("*Guatney* factors") in determining competency.⁷ At the competency hearing in this case, both parties waived the opportunity to review the 20 *Guatney* factors with Dr. Thompson. Finally, in a competency proceeding, the burden is on the State to establish the competency of the defendant by a preponderance of evidence.⁸ However, in this case, the State and the Defense both take the position that the defendant is not competent to stand trial at this time.

The parties' position is consistent with and relies upon the professional judgment of Dr. Thompson. In reviewing the three-pronged test for competency, Dr. Thompson

⁵ State v. *Gibson*, 2008 WL 2428191 (Del. Super. 2008) (Jurden J); State v. Simmons 2005 WL 3007808, (Del. Super. 2005) (Vaughn, J.); State v. *Shields*, Del. Super., 593 A.2d 986, 1010 (Nov. 15, 1990).

⁶ State v. *Shields*, 593 A.2d. at 1005.

⁷ State v. *Guatney*, 207 Neb. 501, 299 N.W. 2d 538 (Neb. 1980); See, e.g., State v. Irving, 2003 WL 20357601 (Del. Super. 2003) (Witham, J.); State v. *Shields*, 593 A.2d at 1010-11.

⁸ *Diaz v. State*, 508 A.2d 861, 863, (Del. 1986).

testified that the defendant does not meet any of the three criteria except that the defendant has a “factual” understanding of the proceedings against him but not a rational understanding of them. In the expert’s opinion, the defendant is not able to consult with defense counsel rationally or to assist in preparing his defense.⁹

Dr. Thompson diagnosed the defendant as having “Psychotic Disorder, Not Otherwise Specified (provisional); Rule Out (possible) Delusional Disorder, Persecutory Type; Rule Out (possible) Schizophrenia, Paranoid Type”¹⁰ Dr. Thompson found that the defendant “reported psychotic symptoms – that is, active delusional beliefs.”¹¹ According to Dr. Thompson, the defendant claims that “his wife and others developed the power to hypnotize him during his sleep, to speak to him and introduce hypnotic suggestions, and to control every aspect of his life”. In the defendant’s words, others had “unprecedented access” to his mind and his life activities.”¹² The defendant claims a great many individuals are involved in the scheme against him, including all of the individuals who live in his apartment building. The defendant had sought the help of the police, the FBI, the Attorney General and others but came to believe that many of those individuals were also involved in the scheme.¹³

Dr. Thompson concluded that the defendant demonstrated “significant rational impairments” and assessed the defendant’s beliefs as “delusional in nature”.¹⁴ Dr. Thompson concluded that the defendant is not competent to stand trial at this time”.¹⁵ Further, Dr. Thompson recommends that the Court order the defendant’s “admission to

⁹ State’s Ex. 2, pg. 4 & 6.

¹⁰ State’s Ex. 2, pg. 4.

¹¹ State’s Ex. 2, pg. 3.

¹² State’s Ex. 2, pg. 4

¹³ State’s Ex. 2, pg. 4.

¹⁴ State’s Ex. 2, pg. 6.

¹⁵ State’s Ex. 2, pg. 6.

the DPC for further evaluation, to undergo treatment, and to receive competency restoration services”.¹⁶ The Psychologist does note that, with appropriate treatment, the prognosis for restoration of his (defendant’s) competency to stand trial is good.”¹⁷

There was no evidence introduced to controvert Dr. Thompson’s findings.

IV CONCLUSION

For the above reasons, Defendant Jeffrey Wogram, is not competent to stand trial pursuant to 11 Del. C. § 404(a), and shall be transferred to the DPC for further evaluation, treatment and competency restoration services.¹⁸

In terms of treatment, the State requested that the Court order that the defendant be required to take any medications prescribed for him at the DPC. According to Dr. Thompson’s report, defendant has declined to accept mental health treatment, including medications, while in prison, and the defendant has expressed the belief that hypnosis is the only treatment that can help him.¹⁹

It is premature, however, at this time to address the issue of whether to mandate that the defendant take prescribed medications. No evidence has been introduced regarding any psychiatric evaluation as contrasted with psychological evaluation of the defendant or of any medications prescribed for him. It is not timely to address the issue, and if defendant cooperates with treatment at the DPC, it will not be necessary to do so. Should it become necessary to consider this issue in the future; more factual information along with legal analysis would be needed before contemplating such an Order.

¹⁶ State’s Ex. 2, pg. 6.

¹⁷ State’s Ex. 2, pg. 6.

¹⁸ By e-mail dated October 28, 2010, Dr. Thompson informed the Court that DPC now has beds available in the event that the defendant’s transfer to DPC is ordered.

¹⁹ State’s Ex. 2, pgs. 4, 6.

Pursuant to Court of Common Pleas Criminal Rule 63, the parties shall have 10 days after the filing of this Order to serve and file written objections to this Order with the Court of Common Pleas.

SO ORDERED

Mary McDonough
Commissioner